

Bell and Deputy Split on Pledge To Choose Prosecutors on Merit

By SEYMOUR M. HERSH

A major conflict has emerged at the highest levels in the Justice Department over whether the Administration will keep President Carter's campaign promise to choose United States attorneys on the basis of merit rather than politics.

Justice Department officials said the high-level dispute directly involved Attorney General Griffin B. Bell and Peter F. Flaherty, the Deputy Attorney General. In a series of interviews over the last three weeks, officials in the department said that Mr. Flaherty, the former Democratic Mayor of Pittsburgh, an early Carter supporter, had emerged as an outspoken advocate of the retention and selection of

United States attorneys on the basis of performance and ability.

Customarily, such appointments, for four-year terms, have been directly influenced by political leaders. The 94 United States attorneys around the nation are responsible for prosecuting Federal crimes.

Justice Department officials said that Jonathan L. Goldstein, the United States Attorney for New Jersey, was among those whose retention had been urged upon the Carter Administration by Mr. Flaherty.

Mr. Goldstein, a Republican appointee, resigned Monday after publicly accusing the Carter Administration of driving him from office in response to "purely political considerations."

To Name Del Tufo

President Carter announced yesterday that he intended to appoint Robert J. Del Tufo, director of New Jersey's Division of Criminal Justice, to replace Mr. Goldstein. The appointment is subject to Senate confirmation.

Earlier this year, the Administration received widespread criticism over the forced resignation of the United States Attorneys in Detroit and Chicago, considered to be effective prosecutors who had been appointed by the previous Administration.

The Justice Department officials said that Mr. Flaherty's strong interest in the issue resulted, in part, from his sharp disappointment last spring when his recommendation for United States Attorney in Pittsburgh was rejected by the White House because of a series of protests from a group of Pennsylvania Congressmen.

Mr. Flaherty refused to discuss the issue

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with The New York Times. Mr. Bell similarly would not submit to an interview, but Michael J. Egan, Mr. Bell's chief associate, confirmed that Mr. Bell and Mr. Flaherty were at odds.

"There is no question," Mr. Egan said in a telephone interview, "that there is a difference of opinion between the two as to who is the best candidate" for the Pittsburgh job. Mr. Egan also did not dispute an assertion that the dispute between the two men included broader issues of the overall retention of qualified United States attorneys.

"When you talk about an excessive amount of White House involvement" in the naming of United States attorneys, Mr. Egan said, "no amount of White House involvement could be excessive."

Within the last few months, government officials said, Mr. Flaherty has written at least one memorandum to Mr. Bell and had direct conversations in which he urged Mr. Bell to permit some of the more effective United States Attorneys who are Republicans to remain on the job until their terms are completed.

In addition, the officials said, Mr. Flaherty has met with some senior White House officials, among them Hamilton Jordan, the senior Presidential aide, and argued that the Administration has an obligation to live up to its pre-election promises to retain competent United States attorneys.

Flaherty's Arguments Rebuffed

"Peter laid out his position in late May or early June," one senior Justice Department official recalled. "He said it was good politics to show that we're bipartisan and he suggested that we announce right now that we're going to keep these good United States attorneys."

Mr. Flaherty's arguments were rejected, the official said.

In the 1976 Presidential campaign, Mr. Carter issued a position paper on judiciary reform in which he stated, "All Federal judges and prosecutors should be appointed strictly on the basis of merit, without any consideration of political aspect or influence."

Mr. Bell endorsed those views before his confirmation as Attorney general, and in May he told a judicial conference in Washington, "If we are really serious about fighting crime nationally, we need

at Odds on Prosecutor Choices

to be more serious about selecting United States attorneys."

In interviews with The Times, past and present Justice Department officials disagreed widely when asked about the caliber of the more than 30 United States attorney appointments thus far made under the Carter Administration.

Many officials described the appointments as mediocre at best; others expressed the view that the men selected were as good as or better than any previous group of politically nominated United States attorneys.

All of the officials agreed, however, that the Administration had not lived up to its promises.

"It's not that they're doing so badly," one senior official said. "It's just that it's different from what they promised."

Mr. Bell was criticized, albeit anonymously, by his subordinates for not standing up to the White House and insisting that politics play a minimal role in the selection process.

A number of officials praised Mr. Egan for not immediately bowing to Congressional pressure in a number of key areas, among them Philadelphia, where Democratic politicians have been demanding the ouster of David W. Marston, a young Republican United States Attorney who has been investigating political corruption and police brutality.

"He's been holding the line on the tough ones," one Justice Department official said. "Without Mike Egan, I'd hate to think what would have happened in some places."

Other Government officials, however, interpreted the Carter Administration's reluctance to act quickly to replace the remaining Republican United States attorneys as an effect of Mr. Flaherty's activities.

"Pete might have scared them a little," one of Mr. Flaherty's supporters said.

Disagreement on Pittsburgh Choice

Mr. Flaherty's involvement in the issue began in March, when he recommended Daniel H. Shapira, a 33-year-old Assistant United States Attorney in Pittsburgh, to be the chief Federal prosecutor there.

Mr. Shapira, chief of the white-collar crime unit in Pittsburgh, had prosecuted many political and organized crime figures in the area and had also headed the Western Pennsylvania Crime Commission.

As reconstructed in a series of interviews, Mr. Shapira was personally inter-

viewed by Mr. Bell and Mr. Egan in Washington and his name was submitted to the White House in mid-March for routine clearance before the Federal Bureau of Investigation began the required background investigation. The requests went to the White House offices of Mr. Jordan and Frank B. Moore, assistant to the President for Congressional liaison.

Within a week, the White House had rejected Mr. Shapira's name on the ground that he was politically unacceptable and his nomination was put in limbo.

On March 30 a group of six Democratic Congressmen from western Pennsylvania, led by John H. Dent of Westmoreland County, wrote President Carter and endorsed George E. Schumacher, a former Assistant United States Attorney who is the Federal public defender in Pittsburgh.

Democrat Prosecuted

Justice Department officials acknowledged that Mr. Shapira had personally prosecuted a leading member of the Democratic Party in Westmoreland County. Mr. Shapira's office also is known to be investigating the activities of a member of the staff of Representative John P. Murtha of Johnstown, another of the Pennsylvania Democrats who wrote Mr. Carter.

In addition, Mr. Shapira's office has indicted one Democratic Party leader in Mr. Murtha's Congressional District on extortion charges and has a second party official under investigation.

Mr. Shapira eventually was interviewed by Representative Murtha for the United States attorney's job and subsequently complained to the Justice Department, knowledgeable sources said, that the Congressman had asked him a number of questions about cases that he would prosecute as well as insisting that Mr. Shapira dismiss all Republicans and appoint only Democrats to his office if he did become Federal prosecutor.

Strong Endorsements

In the spring, Mr. Shapira's appointment was actively urged by Mr. Flaherty as well as by Stuart E. Eizenstat, the Presidential assistant, who telephoned both Attorney General Bell and Mr. Egan to pass along strong endorsements.

The Congressmen, led by Representatives Dent and Murtha, also were applying pressure. One White House official said candidly, "a flap." "I remember it being a test case of just how far we go on this merit system." "You do the best you can" in terms of merit appointments, the aide said, "but what you wind up with is just a level of static that's unacceptable."

One short-run solution, the aide said, was "to delay" and hope that the objectionable candidates proposed by the various senators and representatives run into trouble during background checks by the F.B.I.

In early August, the Justice Department sent Mr. Schumacher's name to the White House and quickly won approval for an F.B.I. check.

High-level Justice Department sources



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formally delayed by the F.B.I. pending a more thorough background investigation. The local office of the bureau is known to have discovered a series of financial transactions between Mr. Schumacher and one of the six Democratic Congressmen who urged his nomination and has requested time to complete a supplemental report, officials said.

Mr. Dent could not be reached for comment and his staff said that he was recuperating from a series of eye operations. Mr. Murtha did not return a reporter's call, but authorized an associate in his office to relay his view that Mr. Schumacher was "eminently more qualified" for the United States Attorney's post than Mr. Shapira.

Asked about the Shapira controversy, Justice Department and White House officials had differing recollections.

Mr. Egan, speaking on behalf of the Attorney General and himself, initially denied that the Justice Department had ever recommended Mr. Shapira for the Pittsburgh post. "We never recommended Shapira to the White House," he said, "and I cannot think of an instance yet in which our recommendations was refused."

He telephoned a reporter a few hours later, however, and said that he had been mistaken. A memorandum asking for permission to begin an F.B.I. investigation of Mr. Shapira had indeed been sent to the White House in March, Mr. Egan said but he characterized that document as pro forma and not a recommendation.

"Bell and Egan did not favor Shapira," Mr. Egan said.

Assumption of Promise

Other officials said, however, that Mr. Shapira was widely considered to have been promised the post in March, pending F.B.I. clearance, and at one time even discussed with Mr. Egan filling out various official forms and documents.

Frank Moore, the White House Congressional liaison director, said in a subsequent interview that Attorney General Bell had "sent over the other guy's name" —Mr. Schumacher's—"but said they were both about equal." Mr. Moore quoted Mr. Bell as saying that "he talked to a judge who said (Schumacher) was a fine man."

Asked about the issue, Mr. Shapira said it would be "inappropriate for me to comment since I do not believe that a decision on this appointment has yet been made."

said that Mr. Flaherty had not immediately been notified by Mr. Bell and Mr. Egan that his personal choice for the post had been overlooked. (Mr. Flaherty was described by associates as enraged and insulted.)

Complicating the issue is the fact, Justice Department officials said, that Mr. Schumacher's clearance has now been